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6 Otto 268
Oct. 2, 1877

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 263.

GEORGE M. WHEELER, PLAINTIFF IN ERROR,

vs.

THE UNION NATIONAL BANK OF PITTSBURGH, PENNSYLVANIA.

IN ERROR TO THE SUPERIOR COURT OF THE CITY AND COUNTY OF NEW YORK.

FILED OCTOBER 20, 1875.

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a *Case on appeal.*

Court of appeals, State of New York.

J. M. Dixon, attorney for respondent.

THE UNION NATIONAL BANK OF PITTSBURG, respondent,
ag'st
GEORGE M. WHEELER, APPELLANT.

Goodrich & Wheeler, attorneys for appellant.

1 Superior court of the city of New York.

THE UNION NATIONAL BANK OF PITTSBURGH
against
GEORGE M. WHEELER, PL'FF IN ERROR.

CLERK'S OFFICE,
Superior Court of the City of New York:

I, Thomas Boese, clerk of the superior court of the city of New York, having compared the annexed copies, judgment-roll, and remittitur from the court of appeals in the above-entitled action, with the originals on file in this office, do certify that the same are correct transcripts therefrom, and of the whole of said originals.

In witness whereof, I have hereunto subscribed my name, and affixed the seal of the superior court of the city of New York, this 9 day of October, A. D. 1875.

[SEAL.] THOMAS BOESE, *Clerk.*

2 Court of appeals.

STATE OF NEW YORK, *ss:*

Pleas in the court of appeals, held at the capitol in the city of Albany, on the 16th day of February, in the year of our Lord one thousand eight hundred and seventy-five, before the judges of said court.

Witness the Hon. Sanford E. Church, chief judge, presiding.

C. O. PERRIN, *Clerk.*

Remittitur Feb. 22, 1875.

3 THE UNION NATIONAL BANK OF PITTSburgh, respondent,
ag't
GEORGE M. WHEELER, APPELLANT.

Be it remembered that on the 30th day of April, in the year of our Lord one thousand eight hundred and seventy-four, George M. Wheeler, the appellant in this action, came here into the court of appeals, by Goodrich & Wheeler, his attorneys, and filed in the said court a notice of appeal and return thereto, from the judgment of the general term of the superior court of the city of New York.

And the Union National Bank of Pittsburgh, the respondent in the said action, afterwards appeared in said court of appeals, by J. M. Dixon, its attorney; which said notice of appeal and the return thereto, filed as aforesaid, are hereunto annexed.

4 Whereupon the said court of appeals, having heard this cause argued by M'r Tho's M. Wheeler, of counsel for the appellant, and M'r Joseph M. Dixon, of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the judgment of the general term of the superior court of the city of New York, appealed from in this action, be in all things affirmed.

And it was further ordered and adjudged that the respondent recover against the appellant costs of appeal to this court.

And it was also further ordered that the record aforesaid, and the proceedings in this court, be remitted to the said superior court, there to be proceeded upon according to law.

Therefore it is considered that the said judgment be in all things affirmed, with costs as aforesaid, and stand in full force, strength, & effect.

5 And hereupon, as well the notice of appeal and return thereto aforesaid, as the judgment of the court of appeals aforesaid, by them given in the premises, are by the said court of appeals remitted into the superior court of the city of New York, before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said superior court before the justices thereof, &c.

R. M. BARBER,
Dep'ty Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
Albany, Feb. 22, 1875.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the court of appeals, with the papers originally filed therein attached thereto.

R. M. BARBER,
Dep'ty Clerk.

6 Superior court of the city of New York.

THE UNION NATIONAL BANK OF PITTSBURGH
vs.
GEORGE M. WHEELER.

This action was commenced by the service of the summons and complaint on the defendant, on the 11th day of December, 1871. The defendant served his answer to said complaint on the 30th day of December, 1871. The following is a copy of the judgment-roll:

7 *Affidavit of service of summons and complaint.*

N. Y. superior court.

THE UNION NATIONAL BANK OF PITTSBURGH,
plaintiff,
against
GEORGE M. WHEELER, DEFENDANT.

CITY AND COUNTY OF NEW YORK, *ss:*

W. J. Jaques, being duly sworn, says that on the 11th day of December, 1871, at No. 54 Cliff street, corner of Beekman street, in said city, he served the annexed summons, together with the complaint therein

mentioned, which is also hereunto annexed, on George M. Wheeler, the defendant in this action, by delivering a copy of the same to him, such defendant, personally, and leaving the same with him.

He further says that he knew the person served as aforesaid to be the person mentioned and described in the said summons as the defendant in this action.

W. J. JAQUES.

Sworn to before me this 11th day of December, 1871.

FRED'K B. WIGHTMAN,
Notary Public, N. Y. Co.

8 *Summons. For a money-demand on contract.*

Superior court of the city of New York.

THE UNION NATIONAL BANK OF PITTSBURGH, plaintiff,
against
GEORGE M. WHEELER, DEFENDANT.

To the defendant:

You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said complaint on the subscriber at his office, No. 195 Broadway, New York City, within twenty days after the service hereof, exclusive of the day of such service; and if you fail to answer the complaint within the time aforesaid, the plaintiff in this action will take judgment against you for the sum of fifteen thousand dollars, with interest on ten thousand dollars thereof from the 24th of March, 1871, and on five thousand dollars thereof from the 10th day of May, one thousand eight hundred and seventy-one, besides the costs of this action and three dollars and sixty-eight cents, cost of protest.

Dated December 9th, 1871.

J. M. DIXON,
Plaintiff's Att'y.

9 Superior court of the city of New York.

THE UNION NATIONAL BANK OF PITTSBURGH, plaintiff,
against
GEORGE M. WHEELER, DEFENDANT.

The above-named plaintiff comes, and by J. M. Dixon, its attorney, respectfully shows to this court, for its complaint herein, and alleges:

That plaintiff now is, and at the several times hereinafter mentioned was, a banking association and corporation doing business and having its place of business in the city of Pittsburgh, State of Pennsylvania, and duly organized and existing under and in pursuance of the act of the Congress of the United States of America, entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3d, 1864, and the several acts of Congress amendatory thereof and supplementary thereto.

And plaintiff, further complaining, alleges, as the first cause of action against the said defendant:

That heretofore, to wit, on or about the twentieth day of January, A. D. 1871, at Brady's Bend, in the county of Armstrong, State of Pennsylvania, one W. D. Slack, as superintendent of Brady's Bend Iron Co., drew his certain draft or bill of exchange in the words and figures following, to wit:

10 $10,000.] BRADY'S BEND, ARMSTRONG CO., PA., *January* 20, 1871.

Sixty days after date pay to the order of G. M. Wheeler ten thousand dollars, value received, and charge to account of—

W. D. SLACK,
Sup't Brady's Bend Iron Co.

To G. M. WHEELER, *Treasurer*,
54 Cliff street, New York.

And delivered the same to the said defendant; that thereafter the said G. M. Wheeler, treasurer, on presentation of said bill of exchange for acceptance, did duly accept the same, and did write across the face thereof the words:

"Accepted, payable at the American Exchange Bank of New York. The Brady's Bend Iron Company, G. M. Wheeler, Treasurer."

That thereafter, and before the maturity of said bill of exchange, the same was duly endorsed by the said defendant and delivered to the plaintiff for value.

That thereafter, to wit, at the maturity of said bill of exchange, the same was duly presented for payment at the said American Exchange Bank of New York, the place where the same was made payable, and payment thereof was duly demanded, but payment was not made, but was refused, and the said bill of exchange was duly protested for non-payment, of all of which due notice was thereupon given to the defendant. That the cost of protest was $1.78.

That said bill of exchange remains wholly unpaid, and that plaintiff is still the owner and holder thereof.

And for a second cause of action the plaintiff alleges that heretofore, to wit, on or about the 8th day of March, A. D. 1871, at Brady's
11 Bend, in the county of Armstrong, State of Pennsylvania, one W. D. Slack, as superintendent of Brady's Bend Iron Co., drew his certain draft or bill of exchange in the words and figures following, to wit:

$5,000.] BRADY'S BEND, ARMSTRONG CO., PA., *March* 8, 1871.

Sixty days after date pay to the order of G. M. Wheeler, esq., five thousand dollars, value received, and charge to acc't of—

W. D. SLACK,
Sup't Brady's Bend Iron Co.

To G. M. WHEELER, *Treasurer*,
54 Cliff street, N. Y. City.

And delivered the same to the said defendant. That thereafter, the said G. M. Wheeler, treasurer, on presentation of said bill of exchange for acceptance, did duly accept the same, and did write across the face thereof the words:

"Accepted, payable at the American Bank, N. Y. The Brady's Bend Iron Co., by G. M. Wheeler, treasurer."

That thereafter, and before the maturity of the same, said bill of exchange was duly endorsed by the defendant and delivered to the plaint-

iff for value. That thereafter, to wit, at the maturity of the same, the said bill of exchange was duly presented for payment at the place where it was made payable, and payment of the same was duly demanded, but payment was not made, and was refused, and the said bill of exchange was thereupon duly protested for non-payment, of all of which due notice was given to the defendant. That the cost of protest was $1.90.

That plaintiff is still the owner and holder of said bill of exchange, and the same is wholly unpaid.

Wherefore plaintiff demands judgment against the defendant
12 for the sum of fifteen thousand dollars, with interest on ten thousand dollars thereof from the 24th day of March, 1871, and interest on five thousand dollars thereof from the tenth day of May, A. D. 1871, and three $\frac{85}{100}$ dollars, cost of protest, together with the costs and disbursements of this action.

J. M. DIXON,
Att'y for Plaintiff, 195 *Broadway, N. Y.*

CITY AND COUNTY OF NEW YORK, *ss:*

J. M. Dixon, of said city, being duly sworn, says that he is the attorney for the above-named plaintiff herein; that the foregoing complaint is true to his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true; that the reason why this verification is made by deponent and not by the plaintiff is that plaintiff is not within the city and county of New York, where deponent resides, but is in the State of Pennsylvania; that deponent's information is derived from sworn copies of the bills of exchange upon which this action is brought, which are now in deponent's possession, and from statements made to deponent by the officers of the plaintiff herein.

J. M. DIXON.

Swown to before me this 9th day of December, 1871.
FRED'K B. WIGHTMAN,
Notary Public, N. Y. Co.

13 Superior court of the city of New York.

THE UNION NATIONAL BANK OF PITTSBURGH
against
GEORGE M. WHEELER.

The defendant, by Goodrich & Wheeler, his attorneys, for answer to the first cause of action in the complaint herein contained, says:

I. That the draft mentioned in said first cause of action was endorsed by this defendant, at the city of New York, and was made and delivered to the plaintiff upon the usurious agreement between the said Brady's Bend Iron Company and the plaintiff, that the said Brady's Bend Iron Company should pay to the plaintiff, and that the plaintiff should reserve and secure to itself, for the loan of money, a greater sum than at the rate of seven per cent. per annum, to wit, at the rate of nine per cent. per annum, together with a commission or exchange of one-quarter of one per cent.; that the said sum was deducted and reserved from the amount of said draft by the plaintiff, and the balance only paid to the said Brady's Bend Iron Company, that is to say that the said Brady's Bend Iron Company agreed to pay, and the plaintiff agreed to receive, one hundred and sixty dollars for said loan, the plaint

iff reserving and securing to itself, for the loan of money on said draft until the maturity thereof, one hundred and sixty dollars.

14 II. And for a separate and further defense to said first cause of action, he says that an act of the Congress of the United States, entitled "An act to provide a national currency, secured by a pledge of the United States bonds, and to provide for the circulation and redemption thereof," passed June 3d, 1864, and the several acts amendatory thereof, under which the plaintiff is incorporated, provides that "Every association may take, receive, reserve, and charge on any loan or discount made, or upon any note, bill of exchange, or other evidence of debt, interest at the rate allowed by the laws of the State or Territory where the bank is located, and no more, and the knowingly taking, receiving, reserving or charging a rate of interest greater than aforesaid shall be held and adjudged a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon."

That the plaintiff is located at Pittsburgh, in the State of Pennsylvania; that the interest allowed by the laws of the said State of Pennsylvania is at the rate of six per cent. per annum.

That on the loan or discount made on the draft in said first cause of action the plaintiff knowingly took, received, reserved and charged a rate of interest greater than at the rate of six per cent. per annum, to wit, at the rate of nine per cent. per annum.

III. For a separate and further defense to said first cause of action, he says that the said Brady's Bend Iron Company is a corporation, duly incorporated by the legislature of the said State of Pennsylvania, under an act entitled "An act to incorporate the Brady's Bend Iron Company," passed May 20th, 1861.

That by said act it is provided "That the said company may borrow money and create indebtedness in such way and manner as the board of directors may deem necessary for the prosecution and manage-

15 ment of the business of the same, and issue the securities of said company therefor, in such form and manner, and payable in such places as they may deem proper, at a rate not exceeding seven per cent." That the draft mentioned in said first cause of action was issued by the said Brady's Bend Iron Company at a rate exceeding seven per cent. per annum, to wit, at the rate of nine per cent. per annum.

IV. For a separate and further defense to said first cause of action, he says that the plaintiff is a corporation, incorporated under the laws of the United States, and is located and carries on its business at Pittsburgh, in the State of Pennsylvania; that the plaintiff has not filed security for costs, as is required by the revised statutes of the State of New York, part three, title four, chapter eight, and section one, and therefore has not legal capacity to sue.

Second. The defendant, for answer to the second cause of action in said complaint contained, says:

I. That the draft mentioned in said second cause of action was endorsed by this defendant, at the city of New York, and was made and delivered to the plaintiff upon the usurious agreement between the said Brady's Bend Iron Company and the plaintiff, that the said Brady's Bend Iron Company should pay to the plaintiff, and that the plaintiff should reserve and secure to itself, for the loan of money, a greater sum than at the rate of seven per cent. per annum, to wit, at the rate of nine per cent. per annum, together with a commission or exchange of one-quarter of one per cent.

That the said sum was deducted and reserved from the amount of

said draft by the plaintiff, and the balance only paid to the said Brady's Bend Iron Company, that is to say, that the said Brady's Bend Iron Company agreed to pay, and the plaintiff agreed to receive,
16 eighty dollars for said loan, the plaintiff reserving and securing to itself, for the loan of money on said draft, until the maturity thereof, eighty dollars.

II. For a separate and further defense to said second cause of action, he says that an act of the Congress of the United States, entitled "An act to provide a national currency, secured by a pledge of the United States bonds, and to provide for the circulation and redemption thereof," passed July 3d, 1864, and the several acts amendatory thereof, under which the plaintiff is incorporated, provides that "Every association may take, receive, reserve, and charge on any loan or discount made, or upon any note, bill of exchange, or other evidence of debt, interest at the rate allowed by the laws of the State or Territory where the bank is located, and no more, and the knowingly taking, receiving, reserving, or charging a rate of interest greater than aforesaid shall be held and adjudged a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon."

That the plaintiff is located at Pittsburgh, in the State of Pennsylvania; that the interest allowed by the laws of the said State of Pennsylvania is at the rate of six per cent. per annum; that on the loan or discount made on the draft in said second cause of action, the plaintiff knowingly took, received, reserved, and charged a rate of interest greater than at the rate of six per cent. per annum, to wit, at the rate of nine per cent. per annum.

III. For a separate and further defense to said second cause of action, he says that the said Brady's Bend Iron Company is a corporation duly incorporated by the legislature of the State of Pennsylvania, under an act entitled "An act to incorporate the Brady's Bend Iron Company," passed May 20th, 1861.

That by the said act it is provided "that the said company
17 may borrow money and create indebtedness in such a way and manner as the board of directors may deem necessary for the prosecution and management of the business of the same, and issue the securities of the said company therefor in such form and manner, and payable at such places as they may deem proper, at a rate not exceeding seven per cent." That the draft mentioned in the said second cause of action was issued by the said Brady's Bend Iron Company at a rate exceeding seven per cent. per annum, to wit, at the rate of nine per cent. per annum.

IV. For a separate and further defense to said second cause of action, he says that the plaintiff is a corporation incorporated under the laws of the United States, and is located at Pittsburgh, in the State of Pennsylvania, where it carries on business; that the plaintiff has not filed security for costs, as is required by the revised statutes of the State of New York, part three, title four, chapter eight, and section one, and therefore has not legal capacity to sue.

Wherefore the defendant demands that plaintiff's complaint be dismissed, with costs.

GOODRICH & WHEELER,
Def't's Att'ys.

CITY AND COUNTY OF NEW YORK, *ss:*

George M. Wheeler, being duly sworn, says that he is the defendant

above named; that the foregoing answer is true of his own knowledge, except as to the matters therein stated on information and belief, and that as to those matters he believes it to be true.

GEO. M. WHEELER.

Sworn to before me this 18th day of December, 1871.

THO'S A. MASTERSON,
Notary Public, N. Y. Co.

18 N. Y. superior court.

THE UNION NATIONAL BANK OF PITTSBURGH
against
GEORGE M. WHEELER.

This action having been brought on to be tried before the under signed, one of the justices of this court, in its regular order upon the calendar, and the parties having waived a trial by jury by consent in open court, after hearing the proofs and allegations by the parties, and due deliberation being had thereon, I do find as matters of fact:

1. That the plaintiff now is, and at the several times hereinafter mentioned was, a banking association and corporation at Pittsburgh, Pa., as alleged in the complaint.

2. That the Brady's Bend Iron Company now is, and at the several times hereinafter mentioned was, a corporation duly incorporated by the legislature of the State of Pennsylvania, under an act entitled "An act to incorporate the Brady's Bend Iron Company," passed May 20th, 1861; that by the said act it is provided that the said company may borrow money and create indebtedness in such way and manner as the board of directors may deem necessary for the prosecution and management of the business of the same, and issue the securities of the said company therefor in such form and manner, and payable in such places as they may deem proper, at a rate not exceeding seven per cent.

19 3. That, at the several times hereinafter mentioned, the rate of interest*ed* in the State of Pennsylvania was and now is fixed by general statute at six per cent. per annum.

4. That on or about the 20th of January, 1871, at Brady's Bend, in the county of Armstrong, State of Pennsylvania, one W. D. Slack, as superintendent of the said Brady's Bend Iron Company, and under authority duly conferred upon him by the company for that purpose, drew his certain draft or bill of exchange in the words and figures following, to wit:

$10,000.00. BRADY'S BEND, ARMSTRONG CO., PA.,
January 20th, 1871.

Sixty days after date pay to the order of G. M. Wheeler ten thousand dollars, value received, and charge to account of—

W. D. SLACK,
Sup't Brady's Bend Iron Co.

To G. M. WHEELER, *Treasurer*,
54 Cliff st., New York.

and delivered the same to defendant. That thereafter the said G. M. Wheeler, treasurer, on presentation of said bill of exchange for acceptance, did duly accept the same pursuant to authority vested in him by the company for that purpose, and did write across the face thereof the words:

"Accepted, payable at the American Exchange Bank of New York. The Brady's Bend Iron Company, G. M. Wheeler, treasurer."

5. That thereafter, and before the maturity of said bill of exchange, the same was duly endorsed by the said defendant, and delivered to the plaintiff for value.

20 6. That thereafter the said bill of exchange thus drawn, accepted, and endorsed was, on the 24th day of January, 1871, discounted by the plaintiffs for the benefit of the said Brady's Bend Iron Company, and that the said last-named company, on said 24th day of January, 1871, received therefor from the plaintiff the face of the said bill of exchange, less the sum of one hundred and sixty dollars.

7. That at the maturity of said bill of exchange, the same was duly presented for payment at the said American Exchange Bank of New York, the place where the same was made payable, and payment thereof was duly demanded, but payment thereof was not made, but was refused, and the said bill of exchange was thereupon duly protested for non-payment, of all of which due notice was given to the defendant. That the cost of protest was one dollar forty-eight cents.

8. That on or about the 8th March, 1871, at Brady's Bend aforesaid, the said W. D. Slack, as superintendent of the Brady's Bend Iron Company, and under authority duly conferred upon him by the company for that purpose, drew his certain other draft or bill of exchange in the words and figures following, to wit:

$5,000.00.] BRADY'S BEND, ARMSTRONG CO., PA.,
March 8, 1871.

Sixty days after date pay to the order of G. M. Wheeler, esq., five thousand dollars, value received, and charge to account of—

W. D. SLACK,
Sup't Brady's Bend Iron Co.

To G. M. WHEELER, *Treasurer*,
54 Cliff st., New York City.

21 and delivered the same to the defendant. That thereafter the said G. M. Wheeler, treasurer, on presentation of said bill of exchange for acceptance, did duly accept the same pursuant to authority vested in him by the company for that purpose, and did write across the face thereof the words:

"Accepted, payable at the American Exchange Bank, N. Y. The Brady's Bend Iron Co., by G. M. Wheeler, treasurer."

9. That thereafter, and before the maturity of said bill of exchange, the same was duly endorsed by the said defendant and delivered to the plaintiff for value.

10. That thereafter the said bill of exchange thus drawn, accepted, and endorsed was, on the 8th of March, 1871, discounted by the plaintiff for the benefit of the said Brady's Bend Iron Company, and that the said last-named company, on the day last named, received therefor, from the plaintiff, the face of the said bill of exchange, less the sum of eighty dollars.

11. That at the maturity of said bill of exchange the same was duly presented for payment at the place where the same was made payable, and payment thereof was duly demanded, but payment thereof was not made, but was refused, and the said bill of exchange was thereupon duly protested for non-payment, of all which due notice was given to defendant. That the cost of protest was one dollar and ninety cents.

12. That the plaintiff is still the owner and holder of said two bills of exchange, and the same remain wholly unpaid.

13. That the plaintiff commenced this action without filing security for costs, as required by section 1, chapter 8, title 4, of part III of the revised statutes of New York, but that such security has been filed since the commencement of this action.

22 Upon the foregoing facts I find, as matters of law:

1. That the plaintiff is entitled to judgment against the defendant for the sum of fifteen thousand dollars, with interest on $10,000 thereof from the 24th of March, 1871, and interest on $5,000 thereof from the 10th of May, 1871, and three dollars and sixty-eight cents, cost of the protest, together with the costs and disbursements of this action.

And I hereby direct that judgment be entered accordingly.

JNO. J. FREEDMAN,
J. Sup'r Court.

Superior court of the city of New York.

THE UNION NATIONAL BANK OF PITTSBURGH, plaintiff,
vs.
GEORGE M. WHEELER, DEFENDANT.

This action being at issue, and a trial by jury having been waived by the respective parties in open court, and the trial of the issues of fact being had on the fifth day of December, A. D. 1872, by the court, the Hon. John J. Freedman, justice, presiding, whose decision in writing has been filed with the clerk, whereby judgment is ordered for the plaintiff against the defendant for the sum of fifteen thousand

23 dollars, with interest on $10,000 thereof from the 24th of March, 1871, and interest on $5,000 thereof from the 10th of May, 1871, and three $\frac{68}{100}$ dollars cost of protest, together with the costs and disbursements of this action; and the court having made a further allowance of three (3) per cent. on the amount of the recovery to the plaintiff as an extra allowance, and the costs having been adjusted at $146.21:

Now, on motion of Joseph M. Dixon, esq., attorney for plaintiff, it is hereby adjudged that The Union National Bank of Pittsburgh, the plaintiff, recover of George M. Wheeler the sum of sixteen thousand eight hundred and seventy-nine dollars and fourteen cents ($16,879.14), the sum above named, with interest to date, together with the sum of six hundred and fifty-two dollars and fifty-eight cents ($652.58), being the said allowance of three per cent. and the costs as adjusted, making together the sum of seventeen thousand five hundred and thirty-one dollars and seventy-two cents ($17,531.72), and that he have execution therefor.

THOMAS BOESE, *Clerk.*

The issues thus framed came on to be heard before the Hon. John J. Freedman, without a jury, at which time the following facts were admitted:

The defendant admits all the allegations of the complaint.

It is admitted that the amount of the first note is	$10,000 00
Interest	1,190 00
Protest	1 70
Total	$11,191 70

24	It is admitted that the second note is...	$5,000 00	
	Interest.....	544 44	
	Protest.....	1 90	
			$5,546 34
	Total.....		$16,738 04

It is admitted by the defendant that the plaintiff, since the commencement of the action, has filed security for costs, as required by statute.

Plaintiff rests.

It is admitted that the law of Pennsylvania fixes, by general statute, the rate of interest at six per cent.

The defendant, to maintain the issue on his part, read the following deposition of William D. Slack:

CITY AND COUNTY OF NEW YORK, *ss*:

WILLIAM D. SLACK, being duly sworn, testified:

Q. Are you superintendent of Brady's Bend Iron Company, and were you such in January and March, 1871?

A. Yes.

Q. Did you, in January, 1871, offer for discount, at the Union National Bank of Pittsburgh, the first draft set forth in the complaint?

A. Yes.

Q. Was that draft discounted by the said bank?

A. Yes; it was.

Q. At what time?

A. January 24th, 1871.

Q. What rate of interest was charged?

A. I received the face of the draft, less one hundred and sixty dollars; nothing was said about exchange, and none was charged, to my knowledge.

25 Q. Did you, in March, 1871, offer for discount at the said bank the second draft set forth in the complaint?

A. I did.

Q. Was it discounted by the said bank?

A. It was.

Q. At what rate of interest was it discounted?

A. I received the face of the draft, less eighty dollars; nothing was said about exchange, and none was paid, to my knowledge.

Q. Have you calculated the rate of interest?

A. According to my calculation it is over nine per cent. per annum.

(Book marked "Defendant's Exhibit A," for identification, shown witness.)

Q. What is that book?

A. It is the bank-book given to the Brady's Bend Iron Company by the Union National Bank of Pittsburgh.

Q. What did you do with the book when the discounts in question were made?

A. In the first discount I did not have the book with me at the time, but the slip marked "Def't's Exhibit B" was handed me; at the time of the second discount I had the book with me; I passed it to one of the officers of the bank, who returned it to me with the entries therein under date of March 8, 1871; I do not know, of my own knowledge, when the entry, under date of Jan. 24th, 1871, was made, or who made it.

(Book Exhibit A offered in evidence and objected to.)

Cross-examination:

Q. Is the Brady's Bend Iron Company, of which you are superintendent, a corporation?

A. Yes, sir.

26 Q. Do you know, of your own knowledge, at what rate the $10,000 draft was discounted?

A. I only know from what I see in this book.

Q. Do you know who took the book, Exhibit A, to the plaintiff, when the entry under January 24th was made?

A. I don't know.

Q. Then, when you say that you received the face of the draft, less one hundred and sixty dollars, you are testifying only from information derived from the book?

A. From the book and from Exhibit B.

Q. Who handed you Exhibit B?

A. I can't positively say, but by one of the officers of the bank.

Q. When you took the drafts to the bank, what was said by you with regard to them?

A. I cannot say what the exact words were, but the substance was, how they were off for money, and whether they could do some paper; that is as near as I can recollect, and that is about all that was said.

Q. Is that the only transaction with the plaintiff that took place in respect to the discount of these drafts?

A. I transacted the business entirely in regard to these discounts, and what I have related above is all that took place.

Redirect:

Q. Did you draw checks against the amount of those discounts on the plaintiff, and were those checks paid by the plaintiff?

A. Yes; I drew checks at different times, and they were paid.

W. D. SLACK.

Sworn to before me this 15th day of November, 1872.

WM E. CURTIS,
Judge N. Y. Superior Court.

27 It is hereby consented that the foregoing examination may be read at the trial of the above cause by either party with the same effect as if the witness were himself present, subject to all legal objections, except as to the manner of taking the same.

New York, Nov. 14, 1872.

J. M. DIXON,
Att'y for Pl'ff.

(Plaintiff's counsel objects to the interrogatory, "What rate of interest was charged?" on the ground that corporations cannot set up the defense of usury; objection overruled; question admitted.

Plaintiff's counsel objects to the question, "At what rate of interest was it discounted?" Objection overruled; question admitted.

Defendant offers in evidence the bank-book between plaintiff and W. D. Slack, superintendent.

Plaintiff's counsel objects, on the ground "that it is not properly authenticated, it not appearing that it is a book with which the Brady's Bend Iron Company has anything to do;" also, on the ground "that the defendant cannot set up usury."

Evidence received for what it is worth.
Plaintiff excepts.
Following is a copy of bank-book, marked "Exhibit A":)

28 EXHIBIT A.

1870.	Nov.	15.	Cash		$508 50
				$5,000 00	
"	Dec.	9.	Wheeler, treasurer	82 50	4,917 50
"	"	14.	Cash		526 68
				5,000 00	
1871.	Jan.	4.	Wheeler, treasurer	80 00	4,920 00
				3,386 78	
"	Feb.	2.	Bennie, treasurer	15 24	3,371 54
				5,296 78	
"	"	9.	Wheeler, treasurer	45 03	5,251 75
"	"	25.	Wheeler, treasurer, cash		3,500 00
				5,000 00	
"	Mar.	8.	" "	80 00	4,920 00
				1,713 99	
"	"	15.	Bennis	33 43	1,680 56
				1,706 93	
			"	20 61	1,684 32
				10,000 00	
"	Jan.	24.	Wheeler, treasurer	160 00	9,840 00

Def't's Exhibit A for identification, T. M. W., J. M. D.
Nov. 13, 1872.

(Defendant's counsel also offers in evidence paper marked "Defendant's Exhibit B."
Same objection; same ruling.)
Following is a copy:

DEFENDANT'S EXHIBIT B.

January 25, 1871.		T. M. W.
G. M. Wheeler, tr	$10,000	J. M. D.
Discount	160	
	$9,840	

Cr. W. D. Slack, sup't.

29 Defendant's counsel reads in evidence the act of incorporation of the "Brady's Bend Iron Company," marked "Exhibit C."

EXHIBIT C.

AN ACT to incorporate the Brady's Bend Iron Company.

SECTION 1. Be it enacted by the senate and house of representatives of the Commonwealth of Pennsylvania, in general assembly met, and it is hereby enacted by the authority of the same:

SECTION 10. That said company may borrow money and create indebtedness in such way and manner as the board of directors may deem necessary for the prosecution and management of the business of the same, and issue the securities of said company therefor in such form and manner, and payable in such places, as they may deem proper, at a

rate of interest not exceeding seven per cent., and dispose of such securities in such manner and at such places as such board may direct.

Thereafter the defendant was sworn in his own behalf, and testified as follows:

GEORGE M. WHEELER called on his own behalf and sworn:

Q. Are you one of the directors of the Brady's Bend Iron Company?
A. I was.
Q. Were you previous to January, 1871?
A. I was.
Q. Was a resolution passed by the board in relation to the issuing of securities when you were present?

30 A. There was.
Q. What was that resolution?
(Objected to, on the ground that the resolution will speak for itself: objection sustained; defendant excepts.)
Q. Have you the book of minutes?
A. I have.
(Book produced.)
Q. Turn to the date of September 29th, 1862; was that the time of the formation of the company?
A. Yes; within a day or two.
Q. Read the resolution there, on page 25.

Resolved, That H. A. S. D. Dudley, esq., superintendent of this company, be, and is hereby, authorized, with the approval of the president, vice-president, or treasurer of this company, to borrow money for this company, as there may be occasion to do so, by his drafts as superintendent on the treasurer, on time, or by his note or notes of this company to be executed by the treasurer of this company, which resolution, being duly seconded, was passed unanimously.

Defendant rests.

Plaintiff's counsel moves to strike out all the testimony tending to show usury, on the ground "that a corporation cannot introduce the defense of usury, nor can the guarantor of a corporation do so."
Motion denied.
Thereafter the court found the facts and the conclusions of law which are included in the judgment-roll, and incorporated in this case, and are to be found at fol. 37.

31 The defendant's counsel thereafter requested, at the settlement of the case, the court to find "that the drafts mentioned in the complaint herein were discounted by the plaintiff at a rate of interest exceeding nine per cent. per annum." And also requested the court to find "that at the time of discounting said drafts nothing was said about exchange, and that no exchange was charged."
The court afterwards found, as a further matter of fact, "that at the time of the discount of the drafts nothing was said about exchange," and refused to find the other matters, to which refusal the defendant excepted, as follows:

32 N. Y. superior court.

THE UNION NATIONAL BANK OF PITTSBURGH }
against
GEORGE M. WHEELER. }

SIR: Please take notice that the defendant in this action excepts to

the refusal of the court to find as matter of fact that "the drafts mentioned in the compaint in this action were discounted by the plaintiff at a rate of interest exceeding nine per cent. per annum;" the defendant also excepts to the refusal of the court to find as matter of fact that no exchange was charged. The defendant also excepts to the conclusion of law found by the court, "that the plaintiff is entitled to judgment against the defendant for the sum of fifteen thousand dollars, with interest on $10,000 thereof from the 24th March, 1871, and interest on $5,000 thereof from the 10th day of May, 1871, and three $\frac{65}{100}$ dollars costs of protest, together with the costs and disbursements of this action."

Dated March 8th, 1873.

Yours, &c.,

GOODRICH & WHEELER,
App'l't's Att'ys.

To J. M. DIXON, Esq.,
Resp'd't's Att'ys.

33 N. Y. superior court.

THE UNION NATIONAL BANK OF PITTSBURGH
against
GEORGE M. WHEELER.

SIR: Please take notice that George M. Wheeler, the above defendant, appeals to the general term of the superior court of the city of New York from the judgment entered herein on the 20th day of January, 1873, for the sum of seventeen thousand five hundred and thirty-one and $\frac{75}{100}$ dollars, damages and costs, in favor of the above-named plaintiff, and against the above-named defendant, and from each and every part of said judgment.

Dated February 13th, 1873.

Yours, &c.,

GOODRICH & WHEELER,
Att'ys for Appellant.

To J. M. DIXON, Esq.,
Resp'd't's Att'y, and to
THOMAS BOESE, Esq.,
Clerk of Superior Court, City of N. Y.

34 Superior court, general term, Oct., 1873.

Present, Monell, Curtis, and Sedgwick, JJ.

UNION NATIONAL BANK OF PITTSBURGH,
resp't,
ag'st
GEORGE M. WHEELER, APP'L'T.

The Brady's Bend Iron Company, a Pennsylvania corporation, drew, in that State, two bills upon its treasurer in New York. The treasurer accepted here the bills in the name of the company "payable at the American Exchange Bank of New York." The defendant endorsed these bills. The superintendent of the company then offered these bills for discount to the plaintiff in Pittsburgh. The plaintiff discounted the bills and passed the amount to the credit of the company's account with it.

The presumption as to negotiable instruments of this kind is that the making and the transfer were for legal and sufficient consideration. The law presumes, primarily, that the acceptance was for value, and that the defendant, as endorser, transferred that acceptance. I do not understand that on the trial or on the appeal the appellant took the position that the evidence showed that the bills had not taken their usual course, but that being, after endorsement, discounted for the company, the usual presumption was not applicable, but that the presumption was that it was made and endorsed for the purpose of raising money, and that the company had accepted without consideration, and the defendant had endorsed for its accommodation (Fielden vs. Laherm, 6 Abb., N. S., p. 341; Phelps vs. Vischen, 50 N. Y., p. 69). No direct evidence was given as to the circumstances of the defendant's endorsement, nor was the learned judge below asked to make any finding of fact in respect to this point; nor did the defendant claim anything except upon the character of the discounting by the plaintiff. We have, therefore, to presume that the defendant had a cause of action for the face of the bill against the company. If he had, the plaintiff had legal power to purchase that cause of action for any sum, and such a purchase could not be in violation of the Brady's Bend Iron Company's charter, which forbade that company to borrow money at a rate greater than six per cent. per annum.

If we should take any other view of this case it would be upon proposition not mooted here or in the court below.

The judgment should be affirmed, with costs to respondent.

At a general term of the superior court of the city of New York, held at the county court-house in said city on the 15th day of October, 1873.

Present, Hon. Claudius L. Monell,
" William E. Curtis,
" John Sedgwick,
Justices.

THE UNION NATIONAL BANK OF PITTSBURGH, pl'ff and resp'd't,
against
GEORGE M. WHEELER, DEF'T AND APP'L'T.

The appeal from the judgment entered in this action on the 22d day of January, 1873, for the sum of seventeen thousand five hundred and thirty-one dollars and seventy-two cents damages and costs, in the office of the clerk of the superior court of the city of New York, in favor of the above-named plaintiff, and against the above-named defendant, coming on to be heard at this general term, and after hearing T. M. Wheeler, esq., of counsel for the appellant, and E. H. Anderson, esq., for the respondent:

It is hereby ordered and adjudged that the said judgment be, and hereby is, in all things affirmed, with costs of appeal to the respondent.

C. L. M.

37 *Judgment.—January* 10, 1874.

Superior court of the city of New York.

THE UNION NATIONAL BANK OF PITTSBURGH
ag'st
GEORGE M. WHEELER.

The defendant in this action having appealed to the general term of this court from the judgment entered in the above-entitled action on the 22d day of January, 1873, in favor of the plaintiff, and the annexed decision of the said court on said appeal having been made and filed, whereby the said judgment is affirmed, with costs of the appeal to the plaintiff; now, on motion of J. M. Dixon, esq., attorney for the plaintiff, it is adjudged that the said judgment be, and hereby is, in all things affirmed, and that the plaintiff recover of the defendant the sum of eighty-nine dollars and twenty-six cents ($89.26) costs of appeal.

THOMAS BOESE, *Clerk.*

38 Superior court of the city of New York.

THE UNION NATIONAL BANK OF PITTSBURGH,
repspondent,
against
GEORGE M. WHEELER, APPELLANT.

SIR: Please take notice that George M. Wheeler, the above-named appellant, appeals to the court of appeals of the State of New York from the judgment entered herein on the 12th day of January, 1874, in favor of the above-named respondent against the above-named appellant, for the sum of eighty-nine dollars and twenty-six cents, and also affirming the judgment entered herein in favor of said respondent and against said appellant on the 22d of January, 1873, for the sum of seventeen thousand five hundred and thirty-one dollars and seventy-two cents ($17,531.72), and said appellant appeals from each and every part of said judgment.

Dated January 21st, 1874.

Yours, &c.,

GOODRICH & WHEELER,
App'lt's Att'ys.

To J. M. DIXON, esq.,
Resp'd't's Att'y and
THOMAS BOESE, esq.,
Clerk of said Court.

39 At a special term of the superior court of the city of New York, held at the city of New York, at the county court-house therein, on the fifth day of March, 1875.

Present, Hon. William E. Curtis, justice.

THE UNION NATIONAL BANK OF PITTSBURGH,
plaintiff & respondent,
against
GEORGE M. WHEELER, DEFENDANT & APPELLANT.

This cause having been brought on upon the remittitur herein sent

down from the court of appeals and now filed in this court, by which remittitur it appears that an appeal was taken by the defendant
10 from the judgment of this court to the said court of appeals, and that such judgment has, by said court of appeals, been in all things affirmed with costs, and that the record and proceedings had been directed by said court of appeals to be remitted to this court, and this court directed to enforce the said judgment of the court of appeals according to law: Now, therefor', on motion of Joseph M. Dixon, esq., of counsel for the plaintiff, it is ordered and adjudged that the judgment of court of appeals be, and the same is hereby, made the judgment of this court, and that the plaintiff have execution against the defendant for $121.25, the costs on said appeal adjusted by the clerk, as well as for the amount adjudged to be recovered in and by the judgment of this court in this case, entered the 22d day of January, 1873, and the costs of appeal to the general term of this court, and that this judgment or order be annexed to the judgment record herein.

Enter.

W. C. C.

11 Superior court of the city of New York.

THE UNION NATIONAL BANK OF PITTSBURGH, plaintiff & respondent,
against
GEORGE M. WHEELER, DEFENDANT & APPELLANT.

The above named defendant having taken an appeal to the court of appeals from the judgment of this court, entered herein on the 12th day of January, 1874, affirming, with $89.26 costs, the judgment entered herein on the 22d day of January, 1873, in favor of the plaintiff against the defendant for the sum of $17,531.72, and the said judgment having by said court of appeals been in all things affirmed with costs, and the remittitur of said court of appeals having been duly filed in this court, and this court having ordered and adjudged that
42 the said judgment of the court of appeals be made the judgment of the court:

Now, on motion of Joseph M. Dixon, esq., attorney for the plaintiff, it is hereby adjudged that the said judgment of the court of appeals be, and the same hereby is made, the judgment of this court, entered on the 12th day of January, 1874, be, and the same hereby is, in all things affirmed, and that plaintiffs do recover against the defendant the sum of $121.25, the amount of costs of said appeal as adjusted by the clerk, as well, also, the amount of said judgment entered against the defendant on the 22 day of January, 1874, with interest, and $89.26 costs of appeal to the general term of this court, with interest, and the plaintiff have execution therefor against the defendant.

THOMAS BOESE, *Clk.*

43 To the honorable Ward Hunt, justice of the Supreme Court of the United States.

The petition of George M. Wheeler respectfully shows:

That heretofore and about the 9th day of February, 1871, the Union National Bank of Pittsburgh, State of Pennsylvania, a corporation incorporated under & in pursuance of the act of Congress of the United

States of America, entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation & redemption thereof," approved June 3, 1864, and the several acts of Congress amendatory thereof & supplementary thereto, commenced an action in the superior court of the city of New York against your petitioner as endorser of two drafts drawn by the Brady's Bend Iron Company, a corporation incorporated by the legislature of the State of Pennsylvania, which drafts were discounted by the said Union National Bank at a rate of interest exceeding ten per cent. per annum.

That the legal rate of interest allowed by the State of Pennsylvania, where the said Union National Bank is located, is six per cent. per annum.

44 That upon a trial of said cause judgment was rendered in favor of the said Union National Bank against your petitioner.

That your petitioner appealed to the general term of the said superior court from the said judgment, which general term approved the said judgment.

Whereupon your petitioner appealed to the court of appeals of the State of New York, the highest court of law and equity in said State in which a decision in said suit could be had, from the judgment of the said general term of the superior court, and said court of appeals, on the sixteenth day of February, 1875, rendered a final judgment approving the said judgment.

That in said suit there was drawn in question the construction of a statute of the United States, and a right, privilege, & exemption claimed by your petitioner under the said statute, to wit, an act of the Congress of the United States entitled "An act to provide a national currency secured by a pledge of the United States bonds & to provide for the circulation & redemption thereof," passed June 3, 1864,

45 and the several acts amendatory thereof; and the decision was against the right, privilege, & exemption claimed by your petitioner under the said statute.

And your petitioner further shows that the construction of the aforesaid statute, and of the right, privilege, and exemption claimed by your petitioner under the said statute, having been drawn in question as aforesaid in said suit, the decision was against the right, privilege, & exemption specially set up & claimed by your petitioner.

Wherefore your petitioner prays that a writ of error may be allowed in order that said matters may be inquired into and justice be done in the premises.

THOMAS M. WHEELER,
Counsel for Petitioner.

CITY & COUNTY OF NEW YORK, *ss:*

George M. Wheeler, being duly sworn, says that he is the above-named plaintiff; that he has read the foregoing petition, and the same is true to the best of his knowledge & belief.

GEO. M. WHEELER.

Sworn to before me this 19th day of Feb'ry, 1875.

EDW. W. CADY,
Notary Public, N. Y. Co.

46 Upon the within petition the writ of error is allowed, Feb'y 24, 1875.

WARD HUNT,
Ass. Just. Sup. Ct U. S.

47 *Bond for costs & damages.*

Supreme Court of the United States of America.

GEORGE M. WHEELER, PLAINTIFF IN ERROR,
vs.
THE UNION NATIONAL BANK OF PITTSBURGH,
defendant in error.

Know all men by these presents that we, Samuel G. Wheeler, j'r, and Joseph I. Bicknell, are held and firmly bound unto the above-named Union National Bank in the sum of forty-four thousand dollars, to be paid to the said Union National Bank, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated the seventeenth day of February, in the year of our Lord one thousand eight hundred and seventy-five.

Whereas the above-named George M. Wheeler has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the court of appeals in the State of New York: Now, therefore, the condition of this obligation is such, that if the above-named George M. Wheeler shall prosecute said writ of error to effect and answer all damages and costs if he fail to make the said writ of error good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

S. G. WHEELER, J'R. [SEAL.]
JOSEPH I. BICKNELL. [SEAL.]

Sealed and delivered and taken and acknowleged this 17 day of February, 1875, before me.

EDW. W. CADY,
Notary Public, N. Y. Co.

48 CITY & COUNTY OF NEW YORK, *ss:*

Samuel G. Wheeler, j'r, and Joseph I. Bicknell, being duly sworn, do depose and say, each for himself, that he is a resident of the State of New York, & a householder therein; that he is worth the sum of forty-four thousand dollars over and above all his just debts and liabilities.

S. G. WHEELER, J'R. [SEAL.]
JOSEPH I. BICKNELL. [SEAL.]

Sworn to this seventeenth day of February, A. D. 1875, before me.

EDW. W. CADY,
Notary Public, N. Y. Co.

FEBRUARY 29, 1875.

I approve of the within bond as to its form & sufficiency to operate as a stay of execution.

WARD HUNT,
Ass. Just. Sup. C't U. S.

(Indorsed:) George M. Wheeler, pl'ff in error, vs. The Union National Bank of Pittsburgh, def't in error. Bond for costs and damages. Thomas M. Wheeler, 59 Wall st., New York City. Filed this day of 187 .

49 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the court of appeals of the State of New York and the judges of the superior court of the city of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of appeals before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Union National Bank of Pittsburgh, plaintiff, and George M. Wheeler, defendant, wherein was drawn in the question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such
50 their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said George M. Wheeler, as by his complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the twenty-fourth day of February, in the year of our Lord one thousand eight hundred and seventy-five.

[SEAL.] D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

Allowed by

WARD HUNT,
Ass. Just. Sup. C't U. S.

51 The United States of America to the Union National Bank of Pittsburgh, State of Pennsylvania, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the superior court of the city & county of New York, in the State of New York, wherein George M. Wheeler is plaintiff in error, and you are defendant in error, to show cause, if any there be, why a judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Ward Hunt, Associate Justice of the Supreme

Court of the United States, this twenty-fourth day of February, in the year of our Lord one thousand eight hundred and seventy-five.

WARD HUNT,
Ass. Just. Sup. Ct U. S.

52 Service of a copy of the within citation is hereby admitted New York, February 26th, 1875.

J. M. DIXON,
Att'y for pl'ff.

(Indorsed:) Superior court. George M. Wheeler, pl'ff in error, ag't Union National Bank of Pittsburgh, def't in error. Goodrich & Wheeler, att'ys pl'ff in error, 59 Wall street, New York, Brown Bro's building. Filed M'ch 1, 1875.

(Indorsement on cover:) No. 263. George M. Wheeler, plaintiff in error, vs. The Union National Bank of Pittsburgh, Penn'a. New York superior court, city and county. Filed 20th October, 1875.

S. Hamilton's Son, Printer, 61 Cedar St., N Y.

United States Supreme Court.

George M. Wheeler,

Plff. in Error,

vs.

The Union National Bank of Pittsburgh,

Deft. in Error.

Points and Authorities for Plff. in Error.

This is a writ of error to the Court of Appeals of the State of New York.

The action was commenced in the Superior Court of the City of York by the Union National Bank of Pittsburgh, a National Bank doing business in the City of Pittsburgh, State of Pennsylvania, against George M. Wheeler, as indorser of two bills of exchange, one for $10,000 and one for $5,000, drawn by W. D. Slack, Superintendent of the Brady's Bend Iron Company, on the said Wheeler, as Treasurer of said company, and accepted by him as such treasurer, payable at the American Exchange National Bank of New York, and indorsed by him individually.

The defences set up were:

1. That the draft was discounted by the plaintiff at a usurious rate of interest, to wit, at the rate of nine per cent. per annum.

2. That the plaintiff was a National Bank, and by the laws of the United States was prohibited from taking a greater rate of interest than that allowed by the State of Pennsylvania, to wit, six per cent. per annum.

3. That the Brady's Bend Iron Company was a corporation created by the laws of Pennsylvania, and was by its charter prohibited from issuing bills of exchange at a rate of interest exceeding seven per cent.

4. That the plaintiff was a foreign corporation and had not filed the security required by the laws of the State of New York, and therefore had not legal capacity to sue.

The action was tried before a Judge of the Superior Court, without a jury; the judge found that the legal rate of interest in Pennsylvania was six per cent. and that the plaintiff discounted the drafts at a rate exceeding nine per cent. per annum, and rendered a judgment for the plaintiff for the full amount of the two drafts, with interest from the time they became due, which judgment was affirmed by the Court of Appeals.

ERRORS ASSIGNED.

The plaintiff in error assigns and specifies as errors:

First.—That the Court erred in finding against the defendant below under the right claimed by him in his second defence; and erred in giving judgment for the plaintiff below for the full amount of the drafts, with interest from the time they became due.

Second.—That the Court erred in giving judgment for the plaintiff, but should have given judgment for the defendant under his first defence.

Third.—That the Court erred in giving judgment for the plaintiff, but should have given judgment for the defendant under his third defence.

Fourth.—That the Court erred in giving judgment for the plaintiff, but should have given judgment for the defendant under his fourth defence.

Fifth.—That the Court of Appeals erred in affirming the judgment of the Superior Court.

POINTS.

FIRST.

Has this Court jurisdiction of this case?

I. It appears that one of the questions mentioned in Sec. 709 of the U. S. Rev. Sts., was raised and presented to the State Court. The defendant below claimed that the plaintiff below was a National Bank, and having taken a greater rate of interest than was allowed by the laws of Pennsylvania, where it was located, it was subject to the forfeiture prescribed by the Statutes of the United States, to wit, the forfeiture of the entire interest which the drafts carried with them.

2. This question was decided by the State Court because it gave judgment for the plaintiff for the full amount of the drafts, with interest from the time they became due.

3. The decision was against the right claimed by the plaintiff in error.

4. This Court therefore has jurisdiction.

SECOND.

This Court having jurisdiction, was this claim of right correctly adjudicated?

Under the decision of this Court in the case of the Farmers and Mechanics Bank *v.* Dearing (91 U. S. 29), this claim of right was erroneously decided against the plaintiff in error.

Sec. 5197 provides that a national bank may take on any *discount* the rate of interest allowed by the laws of the state where it is located, and in addition thereto the current rate of exchange for sight drafts. The Court found that the plaintiff below *discounted* the two drafts, and deducted from the amount of them—$15,000—the sum of $240. The drafts had sixty days to run, which would make the amount of the discount nine and one-quarter per cent. per annum. The Court also found "that at the time of the discount of the drafts nothing was said about exchange." There is no evidence as to the current rate of exchange on sight drafts between Pittsburgh and New York. There is no presumption as to any current rate of exchange. Such drafts may have been at par or a premium. If the excess of three and one-quarter per cent. taken by the plaintiff was for exchange, the burden is on it to show that that was the current rate of exchange on sight drafts at the time.

The adjudication of this claim of right by the plaintiff in error was therefore erroneous.

THIRD.

The claim of right having been erroneously decided against the plaintiff in error, is there any other matter or issue adjudged by the State Court which is sufficiently broad to maintain the judgment of that Court, notwithstanding the error in deciding the issue raised by the Federal question; or is the issue raised by the question of Federal law of such controlling character that its correct decision is necessary to any final judgment in this case? Even admitting that all the other questions decided by the State Court were correctly decided, still the judgment is erroneous, because the plaintiff below was allowed interest, which the laws of the United States declare it shall forfeit.

FOURTH.

The issue raised by the question of the Federal law having been found to be of such controlling character that its correct decision is necessary to any final judgment in this case, and that question having been erroneously decided, this Court will reverse the judgment of the State Court.

FIFTH.

This Court having reversed the judgment of the State Court, will either render such judgment as the State Court should have rendered, or remand the case to that Court to render such judgment. This makes it necessary to look into the other points decided by the State Court.

Was the decision of the State Court in regard to the third defence set up by the defendant correct?

This defence was that the Brady's Bend Iron Company, the drawer of the drafts, was a corporation created by the laws of Pennsylvania, and was by its charter expressly prohibited from issuing these drafts at a rate exceeding seven per cent., whereas they were issued at a rate exceeding nine per cent.

The act of incorporation provides that "the said company may borrow money and create indebtedness in such way and manner as the Board of Directors may deem necessary, for the prosecution and management of the business of the same, and issue the securities of the said company therefor in such form and manner, and payable at such places as they deem proper, at a rate not exceeding seven per cent."

The Court found (fols. 19 and 20) that "W. D. Slack, as superintendent of the said Brady's Bend Iron Company, and under authority duly conferred upon him by the company for that purpose," drew the drafts in suit; and that they were discounted by the plaintiff for the benefit of the Brady's Bend Iron Company, which company received the face of the drafts, $15,000, less $240, which would be at the rate of over nine per cent. The company therefore had no authority to make the drafts; on the contrary, they were expressly forbidden to make them, and they are therefore void.

Bank of U. S. *v.* Owens, 2 Pet. 527.
Curtis *v.* Leavitt, 15 N. Y., 156.
See Green's Brice's Ultra Vires, pp. 28, 158.

"A corporation has no power except what is "given by it incorporating act, either expressly or "as incidental to its existence, or to its express "powers."

Abbott's Dig. of Corporations, 567.
Halstead *v.* May. of N. Y., 3 N. Y., 430.

"As this loan was made by a corporation not "having all the capacities of a natural person, but "being limited in its faculties for the transaction of "business by its act of incorporation, if it be found "that the contract was one which it was forbidden "by that act to make, the loan and all securities "taken to enforce its reimbursement are necessa-"rily void."

Poole *v.* Bard, 12 N. Y., 501.

Persons contracting with a corporation are bound to see that it has power to make the contract.

"It is requiring very little of one who deals with "a corporation having limited powers to inquire "whether the acts upon which he relies are within "the scope of those powers."

Farmers' & Mechanics' Bank *vs.* The Empire Stone Dressing Co., 5 Bosw. (N. Y.) 289.
Green's Brice's Ultra Vires, 159—note.

This Court will, therefore, render a judgment in favor of the plaintiff in error, or remand it to the State Court, with direction to render such a judgment.

SIXTH.

But this Court should decide that the other points, except the Federal question, had been correctly decided by the State Court, what judgment should then be rendered? The plaintiff would be entitled to the amount of the drafts—$15,000—less the amount of the discount—$240—viz: $14,760—and on this amount it would be entitled to no interest what-

ever. The act provides that there shall be "a forfeiture of the entire interest which the note, bill or other evidence of debt carries with it, or which has been agreed to be paid thereon." The words "carries with it" mean the interest to which the holder is entitled until it is paid, and the forfeiture of that interest would mean that no interest whatever is to be allowed. If no interest could be allowed on the drafts of course no interest could be allowed on the judgment recovered on those drafts. In this case there has been no correct judgment rendered, and, therefore, no judgment.

If the statute means anything, it means that the bank shall recover only the amount which it has paid on the drafts.

See *in re* Wild., 11 Blatch. 243.

SEVENTH.

The judgment should be reversed and the cause remanded to the State Court for a new trial.

THOMAS M. WHEELER,

Counsel.

Supreme Court.

OF THE UNITED STATES.

GEORGE M. WHEELER,
Plaintiff in error,

against

THE UNION NATIONAL BANK OF PITTSBURGH,
Defendant in error.

In error to the Court of Appeals of the State of New York

Brief of defendant in error.

The plaintiff in error contends, that by the decision of this cause by the Court of Appeals of the State of New York, the question as to the valdity of the statute of the United States entitled, "An Act to provide a national currency secured by pledge of United States bonds" &c., passed June 3d, 1864, was brought into question, and that the decision was against the validity of that statute.

The action was brought by defendant in error, a National Bank, organized under the aforesaid statute as holder of two bills of exchange drawn and accepted by "The Bradys' Bend Iron Company," a corporation organized under the Laws of Pennsylvania, against George M. Wheeler as endorser before maturity; and the point taken by plaintiff in

error is, that it appears from the evidence, that in discounting said drafts, the bank reserved more than six per centum interest per annum, and as the statute, under which the bank was organized, prohibited it from reserving more than the rate *allowed* by the laws of the State where located, which plaintiff in error claims is six per centum, the bank for that reason could not recover; as well also in consequence of the usury laws of the State of New York, declaring the principal forfeited.

Upon the trial the plaintiff in error admitted every allegation of the complaint, (See page 10 of record.)

It is therefore conceded:

1st. That after the bills were drawn they were delivered to defendant for value received.

2nd. That upon presentation, the drafts were *duly* accepted by the drawee for value.

3d. That thereafter, and before the maturity of said drafts, the defendant indorsed said drafts and delivered them to plaintiff for value.

4th. That the drafts were duly protested for nonpayment and due notice given to defendant.

5th. That the acceptor of said drafts is a corporation.

6th. That plaintiff was a National Bank organized as alleged.

And the Court, upon these admission and all the testimony, found the following facts:

1. That the plaintiff now is, and at the several times hereinafter mentioned was, a banking association and corporation at Pittsburgh, Pa., as alleged in the complaint.

2. That the Bradys' Bend Iron Company now is, and at the several times hereinafter mentioned was, a corporation duly incorporated by the Legislature of the State of Pennsylvania, under an Act entitled "An Act to incorporate the Bradys' Bend Iron Company," passed May 20th, 1861, that by the said act it is provided that the said company may borrow money and create indebtedness in such way and manner as the board of directors may deem necessary for the prosecution and management of the business of the same, and issue the securities of the said company therefor in such form and manner and payable in such places as they may deem proper, at a rate not exceeding seven per cent.

3. That, at the several times hereinafter mentioned, the rate of interest in the State of Pennsylvania was and now is fixed by general statute at six per cent. per annum.

4. That on or about the 20th of January, 1871, at Bradys' Bend, in the county of Armstrong, State of Pennsylvania, one W. D. Slack, as superintendent of the said Bradys' Bend Iron Company, and under authority duly conferred upon him by the company for that purpose, drew his certain draft or bill of exchange in the words and figures following to wit:

Brady's Bend, Armstrong Co., Pa.

$10,000.00. January 20, 1871.

Sixty days after date pay to the order of G. M. Wheeler ten thousand dollars, value received, and charge to account of

W. D. SLACK,
Supt. Brady's Bend Iron Co.

To G. M. WHEELER, Treasurer,
54 Cliff St., New York.

And delivered the same to defendant. That thereafter the said G. M. Wheeler, treasurer, on presentation of said bill of exchange for acceptance, did duly accept the same pursuant to authority vested in him by the company for that purpose, and did write across the face thereof the words; "accepted, payable at the American Exchange Bank of New York.

"The Brady's Bend Iron Company, G. M. Wheeler, treasurer."

5. That thereafter, and before the maturity of said bill of exchange, the same was duly endorsed by the said defendant, and delivered to the plaintff for value.

6. That thereafter the said bill of exchange thus drawn, accepted and endorsed was, on the 24th day of January, 1871, discounted by the plaintiffs for the benefit of the said Brady's Bend Iron Company and that the said last-named company, on said 24th day of January, 1871, received therefor from the plaintiff the face of the said bill of exchange, less the sum of one hundred and sixty dollars.

7. That at the maturity of said bill of exchange, the same was duly presented for payment at the said American Exchange Bank of New York, the place where the same was made payable, and payment thereof was duly demanded, but payment thereof was not made, but was refused, and the said bill of exchanged was thereupon duly protested for non-payment, of all of which due notice was given to the defendant. That the cost of protest was one dollar and forty-eight cents.

8. That on or about the 8th March, 1871, at Brady's Bend aforesaid, the said W. D. Slack as superintendent of the Brady's Bend Iron Company, and under authority duly conferred upon him by

the company for that purpose, drew his certain draft or bill of exchange in the words and figures following, to wit:

Brady's Bend, Armstrong Co., Pa.
$5,000.00. March 8, 1871.

Sixty days after date pay to the order of G. M. Wheeler, Esq., five thousand dollars, value received and charge to the account of

W. D. SLACK,
Supt. Brady's Bend Iron Co.

To G. M. WHEELER, Treasurer,
54 Cliff St., New York City.

And delivered the same to the defendant.

That thereafter the said G. M. Wheeler, treasurer, on presentation of said bill of exchange for acceptance, did duly accept the same pursuant to authority vested in him by the company for that purpose, and did write across the face thereof the words: "accepted, payable at the American Exchange Bank of New York. The Brady's Bend Iron Co., by G. M. Wheeler, treasurer."

9. That thereafter, and before the maturity of said bill of exchange, the same was duly endorsed by the said defendant and delivered to the plaintiff for value.

10. That thereafter the said bill of exchange thus drawn, accepted and endorsed was, on the 8th of March, 1871, discounted by the plaintiff for the benefit of the said Brady's Bend Iron Company, and that the said last-named company, on the day last-named, received therefor, from the plaintiff, the face of the said bill of exchange, less the sum of eighty dollars.

11. That at the maturity of said bill of exchange, the same was duly presented for payment at the place where the same was made payable, and payment thereof was duly demanded, but payment thereof was not made, but was refused, and the said bill of exchange was thereupon duly protested for non-payment, of all of which due notice was given to defendant. That the cost of protest was one dollar and ninety cents.

12. That the plaintiff is still the owner and holder of said two bills of exchange, and the same remain wholly unpaid. (See pages 8 and 9 of record.

Point I.

The transaction was a *purchase* of the bills of exchange, and not a loan where interest was reserved, and therefore the question of usury did not arise, and the statute of June 3d, 1864, was not brought in question.

In this case the note was held by the defendant as a valid obligation against the acceptor before its transfer to plaintiff, who received it for value. There is not the slightest intimation, either in the answer or in the evidence, that the defendant was an accommodation endorser. He was not such; there is no such finding, and none asked. On the contrary, the finding is that after the drafts were drawn they were *delivered* to defendant, and thereafter *duly* accepted, *afterwards* by the defendant, duly endorsed and delivered to plaintiff (see pages 8 and 9).

From these facts there is no escape from the conclusion that defendant, holding the bills in the ordi-

nary course of business as valid obligations against the acceptor, sold them to plaintiff; and in such a case usury can never attach. And in no case where the transaction appears to be a purchase will the Court, as a matter of law, pronounce the contract usurious.

Tyler on Usury, 92, 93.
Flemming v. *Mulligan*, 2 *McCord* (S. C.), 173.
Johnson v. *King*, 3 Id., 365.
Crane v. *Hendricks*, 7 *Wend.*, 569.
Rapalye v. *Anderson*, 4 *Hill*, 472.
Lloyd v. *Scott*, 4 *Peters*, *U. S. R.*, 205.

The fact that the acceptor received from plaintiff the proceeds of the sale has no bearing upon the character of defendant's endorsement.

The extent to which courts have given effect to this circumstance is merely that it is *notice* to the purchaser as to any equities existing (6 Abb., N. S., 341), not that it is *evidence* of any such equities between the acceptor and the defendant. No evidence was offered to prove such equities, and the answer admitted that no such equities existed.

Point II.

The Statute of June 3d, 1864, was not violated for the reason that it did not appear in evidence that the bank reserved a greater rate of interest than was *allowed* by the Laws of Pennsylvania. All that was proven with reference to the Statutes of Pennsylvania appear in the finding (page 8). From this it appears simply that "Pennsylvania, by general statutes, *fixes* the rate of interest at six per cent.,"

and that is all. There is no such proof that the law forbids a higher rate in case of an agreement, or works any forfeiture whatever if a higher rate is taken. Such statutes are a matter of proof as any other fact, and must be proven if their benefit is invoked. For aught that appears, therefore, the contract was within the rate *allowed* by the Laws of Pennsylvania.

Phillip's Evidence, *Vol.* 2, 427. *Note*, 413.
Parsons on Contracts, *Vol.* 2, *p.* 97. *Note*.
Greenwade v. *Greenwade*, 3 *Dana*, 495.
Wright v. *Delafield*, 23 *Barb.*, 498.
Pomeroy v. *Ainsworth*, 22 *Barb.*, 118.
Thompson v. *Ketcham*, 8 *Johns*, 189.
Davis v. *Garr.*, 6 *N. Y.*, 124.
Hosford v. *Nicholas*, 1 *Paige*, 226.

Point III.

Under the Laws of the State of New York, the plaintiff in error was prohibited from setting up the defense of usury. The Session Laws of 1850 of that State, Chap. 172, provide that "no corporation shall hereafter interpose the defense of usury in any action."

This statute has been held by the courts not only to apply to pleading and evidence, but, in fact, entirely to withdraw and withhold the taint of usury from contracts which would otherwise have been usurious, and so have held that corporations not

only cannot defend an action by pleading usury, but also, that they cannot maintain an action to invalidate their contracts on the ground of usury.

Rossa v. *Butterfield*, 33 *N. Y.*, 675.
Butterworth v. *O'Brien*, 28 *Barb.*, 187; 23 *N. Y.*, 275.
Southern Life Ins. Co. v. *Parker*, 17 *N. Y.*, 51.
Curtis v. *Leavitt*, 15 *N. Y.*, *pp.* 85-254, 296.
Belmont B. R. R. v. *Hoge*, 35 *N. Y.*, 65.

In Curtis *v.* Leavitt, the Court said: "My impression that the Act (1850) must be construed as a *repeal* of the statutes of usury as to all contracts of corporations."

Again at page 154: "the effect of the Act of 1850 is to *repeal* the statute of usury, so far as it applies to corporations. The condition of this class of contracts becomes the same as if the usury laws never existed.

This statute applies to foreign as well as domestic corporations.

Southern Life Ins. Co. v. *Parker*, 17 *N. Y.*, 51.
Curtis v. *Leavitt*, 15 *N. Y.*, 296.

And in the case of the Belmont Branch R. R. *v.* Hoge (35 N. Y., Rep. page 65), it was held, that "The Act of 1850 operated *pro tanto* as a repeal of the statutes prohibiting usury, so far as they were applicable to stipulations for a rate of interest exceeding seven per cent. where a corporation is the borrower."

The Courts, therefore, as a necessity naturally resulting from the above decisions, have also held, as the contract is entirely valid (since the statute acts not only *in personam*, but upon the contract directly) that not only can the corporation not interpose the defense of usury, but that the *guarantor* of such a contract made by a corporation cannot interpose such a defense. Nor can an indorser on the draft of a corporation.

Rosa v. *Butterfield*, 33 *N. Y.*, 675.
Strong v. *N. Y., Laundry Mfg. Co.*, 37.
Superior Ct., R. 279.
Graves v. *Lovell, Superior Ct., November Term*, 1874.

Point IV.

The U. S. Statute restricting plaintiff from taking or reserving on a *loan* a greater rate of interest than *allowed* by the State of Pennsylvania has no application here, because,

1st. The transaction in question is not a *loan;* it is a purchase.

2d. It does not appear that the laws of Pennsylvania do not *allow* greater than six per cent. interest if the parties so agree.

But if it had any application, the forfeiture would be limited to the interest, as the statute provides, and not extend to the entire principal.

Point V.

This Court has held that in cases affecting national banks, no loss of the entire debt is incurred by

them as a penalty or otherwise, by reason of the usury laws of any State.

Farmers' and Mechanics' National Bank v. Dearing, 1 *Otto*, 29.

The above decision must be considered as controlling and conclusive of the questions here raised.

Point VI.

The judgment of the Court of Appeals should be affirmed with costs.

E. ELLERY ANDERSON,
Atty. for Defdt. in Error.

JOSEPH M. DIXON,
of Counsel for Defdt. in Error.